

**1999 HOUSE NATURAL RESOURCES**

**HB 1086**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1086

House Natural Resources Committee

Conference Committee

Hearing Date 1/8/99

Tape Number	Side A	Side B	Meter #
1	x		0.0-10.1
Committee Clerk Signature <i>Kevin Hawk</i>			

Minutes:

**SUMMARY OF THE RESOLUTION:** A Bill for an Act to amend and reenact subdivision f of subsection 3 of section 38-14.1-30 of the North Dakota Century Code, relating to persons presiding at surface coal mining permit application conferences.

Chairman Grosz called the meeting into order at 10:02 a.m. in the Pioneer Room. All committee members were present: Chairman Grosz, Vice-Chairman Henegar, Rep. Drovdal, Rep. Galvin, Rep. DeKrey, Rep. Nottestad, Rep. Nelson, Rep. Clark, Rep. Porter, Rep. Martinson, Rep. Hanson, Rep. Kelsh, Rep. Lundgren, Rep. Sandvig, Rep. Solberg.

Chairman Grosz opened the discussion on HB 1086.

Jim Deutsch of the Public Service Commission testified in favor of HB 1086, in place of Chuck Johnson. (See attached testimony.)

Rep. Nelson asked a question of Mr. Deutsch upon completion of his testimony: "How many of these hearings generally take place in the course of the year?"

Mr. Deutsch answered: "In the past we have probably averaged less than one a year. It's not all that often that we get a request for a formal hearing. It's more often that we get a request for an informal conference."

Rep. Nelson continues his questioning: "What are some of the general objections or the reasons for the meeting?"

Mr. Deutsch answers: "It can vary. It can be with regard to a concern a particular individual might have, issues someone might have an effect with the water supply..."

Rep. Nelson asked whether disputes someone might have are settled before meeting in a formal committee.

Mr. Deutsch answered that Rep. Nelson was correct, that most issues are settled in informal conferences.

Rep. DeKrey asked whether the commissioner presiding over the informal hearing be more familiar with the formal hearing, if it would go to a formal hearing.

Mr. Deutsch that yes, the commissioner would be more familiar with the issues, but would have to come in unbiased.

Rep. DeKrey commented that he saw trouble with why there would be problems, as there were only 3 commissioners, and if one of them already had their mind made up, then only 2 others would have to be convinced, so it would not matter who was running the meeting.

Mr. Deutsch answered that he believed that to get to the formal hearing, there is still generally a hearing officer left to appoint, besides the city commissioner being appointed, and that the

practice for the informal hearing has been, that generally another staff member at the commission, or one of the attorneys serving as hearing officer for the informal conference.

Rep. DeKrey: "So it's really not the commissioner who is doing this?"

Mr. Deutsch answered in the affirmative.

Chairman Grosz closed the hearing on HB 1086.

Rep. Nottestad motioned for Do Pass on HB 1086.

Rep. Solberg seconded the motion on 1086.

Chairman Grosz asked for any further discussion.

Rep. Nelson asked if it would be required to pass HB 1086 to stay in compliance with the Federal Service and Money Control and Reclamation Act of 1997.

Chairman Grosz answered that that was what the bill seemed to be indicating, and that it would apply to fairness.

Rep. DeKrey added that if this bill is passed, it should be made consistent with the independent office.

Chairman Grosz called for the roll, as there was no further discussion.

HB 1086 passed with a vote of 15 yes votes, 0 no votes, and 0 absent.

Chairman Grosz adjourned the talks on HB 1086.

Date: 1/8/99  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO.**

House House Natural Resources Committee

Subcommittee on \_\_\_\_\_  
 or

Conference Committee

Legislative Council Amendment Number 1086

Action Taken Do PASS

Motion Made By Nottestad Seconded By Solberg

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	X				
Vice-Chairman Dale Henegar	X				
Representative David Drovdal	X				
Representative Pat Galvin	X				
Representative Duane DeKrey	X				
Rep. Darrell D. Nottestad	X				
Representative Jon O. Nelson	X				
Representative Byron Clark	X				
Representative Todd Porter	X				
Representative Jon Martinson	X				
Reperesentative Lyle Hanson	X				
Representative Scot Kelsh	X				
Representative Deb Lundgren	X				
Representative Sally M. Sandvig	X				
Representative Dorvan Solberg	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment KELSH

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
January 8, 1999 11:03 a.m.

Module No: HR-04-0415  
Carrier: S. Kelsh  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1086: Natural Resources Committee (Rep. Grosz, Chairman)** recommends **DO PASS**  
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the  
Eleventh order on the calendar.

**1999 SENATE NATURAL RESOURCES**

**HB 1086**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1086

Senate Natural Resources Committee

Conference Committee

Hearing Date February 5, 1999

Tape Number	Side A	Side B	Meter #
1		x	1300-1760
Committee Clerk Signature <i>Lyla A. Hagen</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on HB1086: A BILL FOR AN ACT TO AMEND AND REENACT SUBDIVISION f OF SUBSECTION 3 OF SECTION 38-14.1-30 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO PERSONS PRESIDING AT SURFACE COAL MINING PERMIT APPLICATION CONFERENCES.

JIM DEUTSCH, Public Service Commission testified in support of HB1086. (See attached testimony)

SENATOR TRAYNOR asked why is it necessary to put it in the statute if you have it in the rule.

JIM DEUTSCH replied there appears to be an inconsistency between the two and this will clarify that.

SENATOR TRAYNOR closed the hearing on HB1086.



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Senate Natural Resources Committee

Bill/Resolution Number Hb 1086

Hearing Date February 5, 1999

A motion for DO PASS was made by SENATOR FISCHER, seconded by SENATOR

FREBORG. Roll call vote indicated 6 YEAS, 0 NAYS, and 0 ABSENT OR NOT VOTING.

SENATOR FISCHER volunteered to carry the bill.

Roll Call Vote #: / Date: 2-5-99

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate Natural Resources Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number HB 1086

Action Taken DO PASS

Motion Made By Fischer Seconded By Freborg

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Fischer

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1086: Natural Resources Committee (Sen. Traynor, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**HB 1086**

# House Bill 1086

## Public Service Commission Testimony

**Presented by:** Charles E. Johnson  
Public Service Commission

**Before:** House Natural Resources Committee  
Representative Mick Grosz, Chairman

**Date:** January 8, 1999

Mr. Chairman and committee members, I am Charles E. Johnson, an attorney with the Public Service Commission (Commission), and I am here today to testify in favor of HB 1086 that proposes to amend a section of North Dakota Century Code 38.14.1 pertaining to formal hearings on surface coal mining and reclamation permit applications. This bill was introduced at the request of the Commission.

The proposed change will delete language that appears to allow a Commissioner to preside at a formal hearing as well as over an informal conference on the same permit application. Under the reclamation law, an interested party may request an informal conference on a permit application. A hearing officer is appointed to preside over the informal conference and he or she prepares an order with a recommended decision on the issues raised. This decision can then be appealed to the full Commission. All three Commissioners participate in the formal hearing. It would be inappropriate for a Commissioner or any other person to preside over an informal conference and then participate in a formal hearing where the informal conference decision is being appealed.

The proposed amendment will make it clear that no person who presides over an informal conference may preside at a formal hearing.

The proposed statutory change would also result in this State provision on formal hearings reading the same as the federal counterpart in the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. To ensure consistency with the federal provision when the current reclamation program was developed in the late 1970's, the Commission was required to add language to a rule stating that no Commissioner would preside over an informal conference.

The Commission fully supports the proposed amendment to Section 38-14.1-30 of the state's reclamation law.

# House Bill 1086

## Public Service Commission Testimony

**Presented by:** Jim Deutsch  
Public Service Commission

**Before:** Senate Natural Resources Committee  
Senator John T. Traynor, Chairman

**Date:** February 5, 1999

Mr. Chairman and committee members, I am Jim Deutsch, director of the Reclamation Division of the Public Service Commission (Commission), and I am here today to testify in favor of HB 1086 that proposes to amend a section of North Dakota Century Code 38.14.1 pertaining to formal hearings on surface coal mining and reclamation permit applications. This bill was introduced at the request of the Commission.

The proposed change will delete language that appears to allow a Commissioner to preside at a formal hearing as well as over an informal conference on the same permit application. Under the reclamation law, an interested party may request an informal conference on a permit application. A hearing officer is appointed to preside over the informal conference and he or she prepares an order with a recommended decision on the issues raised. This decision can then be appealed to the full Commission. All three Commissioners participate in the formal hearing. It would be inappropriate for a Commissioner or any other person to preside over an informal conference and then participate in a formal hearing where the informal conference decision is being appealed.

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The Commission fully supports the proposed amendment to Section 38-14.1-30 of the state's reclamation law.